BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

ROBYN K. GRAY	}
Claimant VS.	Desket No. 100 022
MANOR NURSING HOME	Docket No. 199,022
Respondent AND	
TRAVELERS INSURANCE COMPANY Insurance Carrier	

ORDER

Respondent appeals from a Preliminary Hearing Order of May 3, 1995, wherein Administrative Law Judge Nelsonna Potts Barnes granted claimant benefits, finding claimant had carried her burden of proof that she had given notice to respondent of personal injury by accident arising out of and in the course of her employment.

Issues

Whether claimant gave notice to the respondent of her accident within ten (10) days of the alleged date of injury per K.S.A. 44-520

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board has jurisdiction to hear this matter as this issue is listed in K.S.A. 44-534a as one granting jurisdiction to the Appeals Board to consider appeals from a preliminary hearing order.

Claimant, a CNA and restorative aide nurse for respondent, alleged injury to her left hip and low back in November 1994 when a patient started to fall and claimant caught her. Claimant experienced a severe pulling pain at that time. She informed her partner Jill Lively and a co-worker Stephanie (last name unknown) of the problem. Claimant also told Nan Bradley and Christy Simmons, the RN on duty, the next day.

The record contains contradicting evidence regarding whether or not the claimant was told to fill out an accident report, but no accident report was prepared.

K.S.A. 44-520 states in part:

"Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the

IT IS SO ORDERED

name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary."

The evidence in the record both supports and contradicts timely notice by claimant to respondent of the accident. The more compelling evidence comes from the claimant indicating notice was given to her supervisor within ten (10) days of the date of injury, satisfying the requirements of K.S.A. 44-520.

The Appeals Board finds that claimant's allegations that notice was given regarding an accident arising out of and in the course of her employment with respondent within ten (10) days of the date of accident is supported by a preponderance of the credible evidence and the award of benefits in claimant's favor by the Administrative Law Judge should be, and is, affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of the Administrative Law Judge Nelsonna Potts Barnes, dated May 3, 1995, is affirmed in all respects.

Dated this day of Au	ugust 1995.
	BOARD MEMBER
	BOARD MEMBER
	BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS John E. Rees II, Wichita, KS Nelsonna Potts Barnes, Administrative Law Judge David Shufelt, Acting Director